



DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 201110-0300]**

**RTID 0648-XX006**

**Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass 2021 Specifications**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes revised 2021 specifications for the summer flounder, scup, and black sea fisheries. The implementing regulations for the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan require us to publish specifications for the upcoming fishing year for each of these species and to provide an opportunity for public comment. The proposed specifications are intended to establish allowable harvest levels for these species that will prevent overfishing, consistent with the most recent scientific information.

**DATES:** Comments must be received on or before [*insert date 15 days after the date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2020-0149, by the following method:

*Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0149](https://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0149),
2. Click the “Comment Now!” icon, complete the required fields, and
3. Enter or attach your comments.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

A Supplemental Information Report (SIR) was prepared for the 2021 summer flounder, scup, and black sea bass specifications. Copies of the SIR are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The SIR is also accessible via the Internet at [http://www.mafmc.org/s/SF\\_2020-2021\\_specs\\_EA.pdf](http://www.mafmc.org/s/SF_2020-2021_specs_EA.pdf).

**FOR FURTHER INFORMATION CONTACT:** Emily Keiley, Fishery Policy Analyst, (978) 281-9116

## **SUPPLEMENTARY INFORMATION:**

### **General Background**

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively manage the summer flounder, scup, and black sea bass fisheries. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) outlines the Council's process for establishing specifications. The FMP requires NMFS to set an acceptable biological catch (ABC), annual catch limit (ACL), annual catch targets (ACT), commercial quotas, recreational harvest limits (RHL), and other management measures, for 1 to 3 years at a time. Projected 2021 specifications for summer flounder (84 FR 54041; October 9, 2019) and scup and black sea bass (85 FR 29345; May 15, 2020) were previously announced. This

action proposes revisions to the 2021 ABC limits, as well as the recreational and commercial ACLs, ACTs, commercial quotas, and RHLs for all three species, consistent with the recommendations made by the Commission's Summer Flounder, Scup, and Black Sea Bass Board and Council at their joint August 2020 meeting. These revisions are primarily based on recent changes to the Council's risk policy, which defines the acceptable risk of overfishing associated with an ABC. The revised risk policy allows for increased risk of overfishing under high stock biomass conditions compared to the previous risk policy. The change is greatest for stocks with biomass above the target level ( $B_{MSY}$ ).

The Scientific and Statistical Committee (SSC) met on July 23, 2020, to review its previous recommendations for 2021 ABCs and to consider possible modifications in light of the new risk policy and other new information. No updated assessment models or biomass projections were available for these species. Therefore, no new stock status information was available. However, the SSC did consider data updates for each species including final 2019 fishery landings information and 2019 Federal trawl survey indices. The SSC also considered staff recommendations and recent fishery performance.

The SSC can deviate from the currently implemented risk policy with sufficient justification, and in this case, the SSC was supportive of revising the ABCs consistent with the revised risk policy prior to these revisions being implemented in Federal regulations. The approval of the risk policy is being considered through a concurrent action (85 FR 71873; November 12, 2020). That action is expected to be finalized prior to our approval of these 2021 specifications.

### **Proposed 2021 Specifications**

#### *Summer Flounder Specifications*

For summer flounder, applying the revised risk policy, keeping all other relevant factors the same as previously adopted, results in an increase in the recommended 2021

ABC from 25.03 million lb (11,354 mt) to 27.11 million lb (12,297 mt). This represents an 8-percent increase in the ABC and an increase in the probability of overfishing from 34 to 39 percent. Given the high biomass (healthy stock status) of summer flounder, the revised risk policy allows for a slightly increased risk of overfishing, which balances fishery access with the prevention of overfishing. Section 5.1 of the Council's SIR provides information on how the revised ABC was calculated using the new risk policy. The resulting recommended catch and landings limits are shown in Table 1.

**Table 1 -- Summary of 2021 Summer Flounder Fishery Specifications**

2021 Specifications	million lb	mt
OFL	31.67	14,367
ABC	27.11	12,297
Commercial ACL	14.63	6,635
Commercial ACT	14.63	6,635
Commercial Quota	12.49	5,663
Recreational ACL	12.48	5,662
Recreational ACT	12.48	5,662
Recreational Harvest Limit	8.32	3,776

We are also developing a final rule to implement a new state-by-state allocation formula for the commercial summer flounder fishery, as described in Amendment 21 to the FMP (85 FR 48660; August 12, 2020). We approved Amendment 21 on October 19, 2020. We anticipate publishing a final rule for Amendment 21 before we finalize these specifications, which would enable us to use the new allocation formula to set 2021 commercial state summer flounder quotas prior to the start of the 2021 fishing year. However, because the timing is uncertain, this proposed rule includes initial state quotas based on both the current and revised allocation formulas. We intend to implement the new commercial state summer flounder quotas, through the final rule if Amendment 21 is approved and effective prior to January 1, 2021.

The initial 2021 state-by-state summer flounder quotas are provided in Table 2. The initial quotas are presented using the current allocation formula and the allocation

formula that will be used if Amendment 21 is approved prior to the start of the 2021 fishing year. Through the final rule, prior to the start of the fishing year, we will announce any adjustments necessary to address any long-standing overages or potential 2020 overages to provide the states with their final quotas.

**Table 2 -- Initial 2021 Summer Flounder State-by-State Quotas**

State	Initial 2021 Quotas* Current Allocations (lb)	Initial 2021 Quotas* Amendment 21 Allocations (lb)	Initial 2021 Quotas* Current Allocations (mt)	Initial 2021 Quotas* Amendment 21 Allocations (mt)
ME	5,940	14,342	2.69	6.51
NH	57	9,844	0.03	4.47
MA	851,875	1,015,179	386.40	460.48
RI	1,958,804	1,861,550	888.50	844.38
CT	281,909	579,376	127.87	262.80
NY	955,109	1,094,113	433.23	496.28
NJ	2,088,951	1,961,062	947.53	889.52
DE	2,222	11,499	1.01	5.22
MD	254,684	558,559	115.52	253.36
VA	2,662,463	2,399,576	1,207.67	1,088.43
NC	3,427,985	2,984,903	1,554.91	1,353.93
Total	12,490,000	12,490,000	5,665.37	5,665.37

\*Initial quotas do not account for any previous overages. These allocations are based on the current allocation formula, and the allocation formula from Amendment 21

This action makes no changes to the current commercial management measures, including the minimum fish size (14 inch (36 cm) total length), gear requirements, and possession limits. Changes to 2021 recreational management measures (bag limits, size limits, and seasons) are not considered in this action, but will be considered by the Board and Council later this year when additional data are available for 2020.

#### *Scup Specifications*

Application of the revised risk policy to the 2021 scup OFL, keeping all other relevant factors the same, would result in the 2021 ABC increasing from 30.67 million lb (13,912 mt) to 34.81 million lb (15,790 mt). This represents a 13-percent increase in the ABC. Section 5.2 of the Council's SIR provides information on how the revised ABC was calculated using the new risk policy. The resulting recommended catch and landings

limits are shown in Table 3.

**Table 3 -- Summary of 2021 Scup Fishery Specifications**

2021 Specifications	million lb	mt
OFL	35.30	16,012
ABC	34.81	15,791
Commercial ACL	27.15	12,317
Commercial ACT	27.15	12,317
Commercial Quota	20.50	9,299
Recreational ACL	7.66	3,474
Recreational ACT	7.66	3,474
Recreational Harvest Limit	6.07	2,752

This action proposes no changes to the 2021 commercial management measures for scup, including the minimum fish size (9 inch (22.9 cm) total length), gear requirements, and quota period possession limits. Like summer flounder, potential changes to the recreational measures (bag limits, size limits, and seasons) for 2021 will be considered later this year when additional data are available for 2020.

#### *Black Sea Bass Specifications*

Application of the revised risk policy to 2021 black sea bass OFL, keeping all other relevant factors the same, would result in the 2021 ABC increasing from 15.07 million lb (6,836 mt) to 17.45 million lb (7,915 mt), representing a 16-percent increase. As specified in the FMP, 49 percent of the ABC that is expected to be landed is allocated to the commercial fishery and 51 percent is allocated to the recreational fishery. Expected discards in each sector are added to these amounts to derive commercial and recreational ACLs. The Council and Board recommended revisions to the method for calculating expected discards for black sea bass. The revised method is based on the assumption that sector-specific discards, as a percentage of sector-specific catch, will be the same as the 2016-2018 average (*i.e.*, commercial dead discards would account for 36 percent of commercial catch and recreational dead discards would account for 20 percent of recreational catch). This allows commercial discards to scale up with the increase in

the quota, consistent with past trends in the fishery. The previously used method for calculating expected discards under-predicted actual discards in both sectors, contributing to commercial and recreational ACL overages in every year since 2015. The revised methodology reduces the likelihood of ACL overages. The resulting recommended catch and landings limits are shown in Table 4. This action proposes no changes to the 2021 commercial management measures for black sea bass, including the commercial minimum fish size (11 inch (27.94 cm) total length) and gear requirements.

**Table 4 -- Summary of 2021 Black Sea Bass Specifications**

2021 Specifications	million lb	mt
OFL	17.68	8,021
ABC	17.45	7,916
Commercial ACL	9.52	4,320
Commercial ACT	9.52	4,320
Commercial Quota	6.09	2,764
Recreational ACL	7.93	3,596
Recreational ACT	7.93	3,596
Recreational Harvest Limit	6.34	2,877

This action proposes revisions to the projected state-by-state February black sea bass recreational fishery harvest. No changes to the management measures for the February fishery are being proposed. The harvest projections are being updated to incorporate the revised Marine Recreational Information Program data, but the overall estimation method would remain unchanged (Table 5). States that choose to participate in this optional opening must use these revised values when developing state waters management measures for the rest of the year. The purpose is to ensure their participation in this optional opening does not increase their annual recreational black sea bass harvest in such a way as to result in an overage of the coastwide RHL. Changes to management measures for the overall recreational black sea bass fishery will be considered later this year when additional 2020 data is available.

**Table 5 -- Recreational Black Sea Bass February Harvest Estimates Used for 2018-**

## 2020 and the Proposed 2021 Estimates

State	2018-2020 Harvest Estimates (lb)	2018-2020 Harvest Estimates (mt)	Proposed Harvest Estimates (lb)	Proposed Harvest Estimates (mt)
RI	288	0.13	1,146	0.52
CT	57	0.03	158	0.07
NY	9,410	4.27	41,871	18.99
NJ	82,850	37.58	405,913	184.12
DE	1,297	0.59	6,418	2.91
MD	541	0.24	2,227	1.01
VA	5,496	2.49	24,891	11.29
NC	62	0.03	1,369	0.62
Total	100,000	45.36	483,993	219.54

### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule is exempt from review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

The Mid-Atlantic Fishery Management Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with a SIR. The proposed action would revise the catch and landings limits for summer flounder, scup, and black sea bass in 2021 based on the recommendations of the SSC, the Council, and Board. The proposed 2021 specifications are an increase, for all three species, compared to the previously approved 2021 quotas, and are an increase for summer



flounder and black sea bass compared to 2020 quotas. No changes to the Federal commercial fishery management measures are being proposed. Recreational fishery management measures are developed in a separate action.

Vessel ownership data were used to identify all individuals who own fishing vessels. Vessels were then grouped according to common owners. The resulting groupings were then treated as entities, or affiliates, for purposes of identifying small and large businesses which may be affected by this action. Affiliates were identified as primarily commercial fishing affiliates if the majority of their revenues in 2018 came from commercial fishing. Some of these affiliates may have also held party/charter permits. Affiliates were identified as primarily for-hire fishing affiliates if the majority of their revenues in 2018 came from for-hire fishing. Some of these affiliates may have also held commercial permits.

Based on this grouping, a total of 732 commercial affiliates reported revenue from summer flounder, scup, and/or black sea bass landings in at least one year during 2016-2018. Based on combined receipts in 2018, 725 (99 percent) of these commercial affiliates were classified as small businesses and 7 (1 percent) were classified as large businesses. A total of 286 affiliates were identified as small businesses which may be impacted by this action (*i.e.*, they held summer flounder, scup and/or black sea bass moratorium and/or for-hire permits in 2016-2018) but reported no revenues from commercial or recreational fishing in 2018. These 286 affiliates are not discussed further.

Regarding the for-hire fishery, a total of 389 affiliates generated revenues from recreational fishing in at least one year during 2016-2018. All of these affiliates were categorized as small businesses based on their 2018 revenues. It is not possible to determine the proportion of their revenues that came from fishing for an individual species. However, given the popularity of summer flounder, scup, and black sea bass as

recreational species in the Mid-Atlantic and southern New England, revenues generated from these species are likely important for many of these firms at certain times of the year.

The 725 potentially impacted small businesses had average total annual revenues of \$432,470, and on average \$50,899 (12 percent) of those annual revenues came from commercial landings of summer flounder, scup and/or black sea bass during 2016-2018. The 7 potentially impacted large businesses had average total annual revenues of \$17.4 million, and on average \$426,859 (2 percent) of those annual revenues came from commercial landings of summer flounder, scup, and/or black sea bass during 2016-2018.

The proposed 2021 specifications are an increase, for all three species, compared to the previously approved 2021 quotas, and are an increase for summer flounder and black sea bass compared to 2020 quotas. The proposed action for scup is expected to result in similar levels of commercial scup landings and revenues as over the past several years because commercial scup landings appear to be influenced more by market factors than the annual commercial quota. The proposed action for summer flounder and black sea bass is expected to have a moderate positive socioeconomic impact for all participants because it would allow for increased commercial landings and revenues. This action does not consider changes to recreational management measures.

As result, this action is not expected to adversely impact revenues for commercial and recreational vessels that fish for summer flounder, scup, and, black sea bass. Because this rule will not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: November 12, 2020.

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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